STATE OF MICHIGAN

COURT OF APPEALS

IDA SPENCER,

Plaintiff-Appellee,

v

CITY OF IONIA,

Defendant-Appellant.

UNPUBLISHED
October 26, 2004

No. 248400
Ionia Circuit Court
LC No. 03-022571-NO

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order denying its motion for summary disposition in this governmental immunity case. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff sustained injuries when she tripped on a portable sign positioned on the surface of a public roadway. She filed suit alleging that defendant breached its duty to repair and maintain the road so that it was reasonably safe for public travel by placing a sign whose stanchions were not clearly visible on the improved portion of the roadway, and failing to warn of the presence of the sign. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7) and (8), arguing that the highway exception to governmental immunity did not apply because traffic signals and signs did not come within the definition of highway. The trial court denied the motion, reasoning that a governmental agency's duty under the highway exception was not limited to maintaining the roadbed itself in a reasonably safe condition.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

The governmental immunity act, MCL 691.1401 *et seq*., provides that a governmental agency is immune from tort liability while engaging in a governmental function unless a specific exception applies. The highway exception to governmental immunity, MCL 691.1402(1), requires a governmental agency to maintain a highway under its jurisdiction in reasonable repair so that it is reasonably safe and convenient for public travel. A municipality has no duty to

repair or maintain and is not liable for injuries arising from a portion of a county highway outside the improved portion designed for vehicular travel, unless at least thirty days prior to the injury the municipality knew or should have known of the defect, and the defect was the proximate cause of the injury. MCL 691.1402a(1).[1]

An action cannot be maintained under the highway exception unless it clearly falls within the scope and meaning of MCL 691.1402(1). *Hatch v Grand Haven Charter Twp*, 461 Mich 457, 464; 606 NW2d 633 (2000); *Weaver v Detroit*, 252 Mich App 239, 245; 651 NW2d 482 (2002). Liability for the failure to maintain a highway exists only if the defect complained of is "actually and specifically included" in the statutory definition of highway. *Ridley v Detroit (On Second Remand)*, 258 Mich App 511, 515; 673 NW2d 448 (2003). Traffic signals and signs are not part of the highway as that term is defined by statute. MCL 691.1401(e); *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 182-183 n 37; 615 NW2d 702 (2000). The highway exception imposes a duty of reasonable repair and maintenance as opposed to a duty to keep the highway reasonably safe. *Id*. at 160. Plaintiff's injury resulted when she tripped over a portion of a portable sign that had been placed on the roadbed, and was not caused by a defect in the roadbed itself. Plaintiff's claim fell outside the scope of the highway exception. MCL 691.1402a(1); *Weaver*, *supra*. For the above reasons, we reverse the trial court's denial of defendant's motion for summary disposition.

Reversed.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Richard A. Bandstra

[1] Defendant conceded for purposes of its motion for summary disposition that it had jurisdiction over the roadway on which plaintiff's injury occurred.